

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 8, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP70  
STATE OF WISCONSIN**

**Cir. Ct. No. 2010FA3723**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE MARRIAGE OF:**

**LAURIE MARIE SALIM,**

**PETITIONER-RESPONDENT,**

**v.**

**MUHANNAD MUSTAFA SALIM,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: CARL ASHLEY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 CURLEY, P.J. Muhannad Mustafa Salim, *pro se*, appeals the judgment of divorce initiated by his wife, Laurie Marie Salim, n/k/a Laurie Belter (hereafter, “Belter”). Salim argues that the trial court erred when it: (1) approved the marital settlement order despite his refusal to either agree to it or sign it;

(2) ordered him to pay fifty percent of the guardian ad litem's fees; and (3) failed to give him the opportunity to challenge the guardian ad litem's report. Further, Salim submits that the trial court erroneously exercised its discretion when it: (1) refused to grant him an adjournment to obtain a lawyer; (2) entered an order holding open placement of the children with Salim until the children reach age eighteen; (3) failed to evenly divide the marital property; and (4) denied him maintenance. For the reasons set forth below, we affirm.

### **BACKGROUND**

¶2 Belter and Salim were married on October 23, 2000. They have three children: the eldest was born in 2001; the middle child was born in 2003; and the youngest was born in 2006. The parties separated in April 2010. Prior to the filing of the divorce case, which occurred on May 21, 2010, Belter obtained a domestic abuse injunction against Salim which was to be in effect for four years. Salim was later charged and convicted of violating the restraining order and criminal damage to property. He was also found guilty of burglary, stalking, and bail jumping. Before the divorce was concluded, Salim received a cumulative sentence of approximately nine years in prison, followed by six years of extended supervision. While the criminal case was pending, the judge in the criminal case prohibited Salim from contacting his wife and children in any fashion after allegations were made that Salim had threatened Belter. Following a post-sentencing motion, the judge in the criminal case amended the judgment of conviction to order Salim not to have any contact with Belter, his children, and a child of Belter's from a different relationship, throughout his entire sentence.

¶3 Due to Salim's incarceration and some apparent communication problems, Salim was not always physically present for some of the pretrial

conferences in the divorce trial. In addition, his attorney withdrew due to Salim's inability to pay his attorney's fees. Because of the parties' inability to agree on the custody and placement of the children and the domestic abuse allegations, the trial court appointed a guardian ad litem for the children.

¶4 Ultimately, on September 27, 2011, the trial court conducted a contested divorce trial. Those present for the trial were Belter, her attorney, and the guardian ad litem. Salim also appeared via video conference. Belter submitted a proposed marital property agreement with the court on the date of trial. Both Belter and Salim testified. In addition, the guardian ad litem orally recommended to the court, in light of the criminal convictions and the restrictions put on Salim's contacting the children, that the court should grant Belter sole custody and primary placement of the children and hold open placement of the children with Salim. The guardian ad litem advised the court that he had met with all the parties including the children, examined the criminal court records, and conducted an investigation. He also pointed out that, given Salim's sentence structure, it is quite likely that by the time Salim serves his sentence all of his children will be adults. In addition, the guardian ad litem told the court that his investigation of Salim's immigration status revealed that the government was in the initial stages of deporting Salim back to Jordan. The guardian ad litem also elicited testimony from Belter that she had made arrangements with his office to pay fifty percent of his fee.

¶5 Salim contended that he had not received all the information he was entitled to. While admitting that he had received Belter's financial statement, he claimed that he had asked for additional information such as the tax refunds for the past three years, which he never received, and he argued that the information concerning his wife's pension was incorrect, largely because the value of the

pension went down, not up, as the case progressed. Originally Belter wrote on her financial statement that her pension was worth approximately \$1200; however, the last financial statement reflected a value of only \$200. Belter explained that she was just recently eligible for a pension and her earlier estimate of its value was due to her mistaken belief that she had been accruing pension rights for some time.

¶6 At trial, Salim also disputed several other provisions in the proposed marital property division. He argued that he never received his personal effects, consisting of jewelry, expensive watches, a coin collection, his passport and paperwork. Belter disputed this contention. She testified that Salim had, on two occasions, arrived with a police escort and had taken all of his belongings from the home. Salim also complained that he had insufficient communication with the guardian ad litem and did not agree with the order that he not have any contact with his children. Salim further argued that, contrary to the trial court's oral finding, he never waived his right to maintenance.

¶7 After hearing testimony, the trial court adopted and incorporated the proposed marital settlement requests that were not disputed. As pertinent here, the trial court gave Belter sole custody and placement of the three children of the marriage, and there was a hold-open on placement with Salim until the children reach age eighteen due to the criminal court order prohibiting any contact. The trial court also held open child support from Salim. The trial court made a finding that the marital property had been split evenly and the court awarded Belter her modest pension because Salim "cannot help out in any way with the children." At trial, the trial court also stated: "The court is going to waive maintenance as to

both parties, based on the circumstances.”<sup>1</sup> As to the guardian ad litem fees, the trial court split the fees fifty-fifty between Belter and Salim and ordered the County to pay Salim’s fifty percent, with Salim reimbursing the County when he was able.

### ANALYSIS

¶8 “In reviewing legal issues, such as construction of a divorce judgment, appellate courts apply a *de novo* standard of review.... We construe divorce judgments at the time of their entry and in the same manner as other written instruments.” *Waters v. Waters*, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655. Many of the issues raised on the appeal and cross-appeal fall within the discretionary standard of review we apply to divorce determinations. See, e.g., *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996) (maintenance); *Long v. Long*, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995) (valuation); *Bisone v. Bisone*, 165 Wis. 2d 114, 123-24, 477 N.W.2d 59 (Ct. App. 1991) (attorney fees). “Whether the trial court properly exercised its discretion is a question of law.” See *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280, 294, 544 N.W.2d 561 (1996). The trial court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. *Id.*

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<sup>1</sup> It is clear from the context of the statement that the trial court was accepting Belter’s waiver of maintenance and *denying* maintenance to Salim. The trial court misspoke when it said it was waiving maintenance to Salim.

*A. The trial court properly exercised its discretion in refusing to grant Salim an adjournment.*

¶9 Salim argues that he was denied a fair hearing because the trial court would not grant him a continuance to obtain a lawyer. As noted, the divorce action was filed on May 21, 2010. The trial was held almost one-and-one-half years later. Salim had an attorney when the case was first filed. He was unable to continue to be represented because he had no funds with which to pay his attorney. Since shortly before the divorce action was filed, Salim has been incarcerated. It is unlikely that his finances improved during that time. We agree with the trial court that Salim had ample time to secure legal counsel. Inasmuch as Salim is *pro se* in this appeal, it is quite likely that an adjournment of the trial would not have resulted in his being represented by a lawyer. Salim did ask two of the judges who presided over his case to appoint a lawyer for him. Both declined to do so. This is a civil case and Salim is not entitled to a court-appointed lawyer. *See Piper v. Popp*, 167 Wis. 2d 633, 637, 482 N.W.2d 353 (1992) (“[A] presumption exists against appointment of counsel for an indigent civil litigant when the litigant, such as the litigant in this case, will not likely be deprived of personal liberty if unsuccessful in the litigation.”). In two letters to the court, written shortly before the trial, Salim did not renew his request for counsel or ask for an adjournment. In addition, Salim knew that a trial date had been set and he was prepared for trial. The trial court did not erroneously exercise its discretion in refusing to grant an adjournment.

*B. The trial court did not believe that the parties had entered into a stipulated marital settlement agreement.*

¶10 Salim also claims that the trial court approved the marital settlement agreement despite the fact that he never agreed to nor approved it. He also suggests someone forged his name on the document. He is incorrect. The trial

court did not approve the marital settlement order as a stipulation between the parties. Rather, the trial court incorporated the marital settlement agreement after taking testimony from the parties and hearing the guardian ad litem's recommendation. The marital settlement agreement filed by Belter on the day of trial was titled "Proposed Marital Settlement Agreement." The trial court never stated that it was an agreement of the parties. Rather, the trial court used the proposal as a tool to determine which issues were being disputed. The fact that the trial court ultimately accepted the provisions in the document does not mean that it approved the marital settlement agreement as a stipulation between the parties. The trial court independently reached its findings and conclusions after hearing the testimony of the parties and the recommendation of the guardian ad litem.

*C. The trial court properly required Salim to pay fifty percent of the guardian ad litem fees.*

¶11 Salim argues that, pursuant to WIS. STAT. § 767.407(6) (2011-12)<sup>2</sup> and case law, the trial court erred in ordering him to pay half of the guardian ad litem fees. Section 767.407(6) provides:

COMPENSATION. The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem.... If both parties are indigent, the court may direct that the county of venue pay the compensation and fees. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08(4m)(b). The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

reimbursement. The court may enforce its orders under this subsection by means of its contempt power.

¶12 Salim contends that because he is indigent he should not be ordered to pay any guardian ad litem fees, citing *Olmsted v. Circuit Court for Dane Cnty*, 2000 WI App 261, 240 Wis. 2d 197, 622 N.W.2d 29, for support. In *Olmsted*, the indigent petitioner was required to pay towards the guardian ad litem fees shortly after the commencement of a post-divorce motion to modify the terms of placement of the children. *Id.*, ¶¶2-3. In other words, she was obligated to make “up-front” payments to the guardian ad litem before the trial court would hear her motion. See *id.*, ¶10. This court found that scheme unlawful. *Id.*, ¶11. The facts in *Olmsted* differ from those here. In *Olmsted*, this court determined that an indigent petitioner in a post-divorce motion could not be required to pay guardian ad litem fees “at the inception or during the pendency of an action.” *Id.*, ¶10. However, here, the trial court ordered payment at the conclusion of the case, after the parties presented their arguments. The statute permits such an order.<sup>3</sup>

¶13 Salim argues that the County cannot be ordered to pay his portion of the guardian ad litem fees unless both parties are indigent, and he argues Belter is not indigent. In *Olmsted*, we held that pursuant to WIS. STAT. § 767.045(6), the County can only be required to pay the guardian ad litem fees if both parties are indigent. *Olmsted*, 240 Wis. 2d 197, ¶¶7-8. In *Olmsted*, only one of the parties was indigent. *Id.*, ¶¶3, 9. In the case before us, however, both parties have been found indigent. Although Belter made arrangements to pay her one-half of the guardian ad litem fees, on May 21, 2010, the chief judge signed an order finding

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<sup>3</sup> While WIS. STAT. § 767.405(6) contemplates that the trial court order the guardian ad litem fees to be paid by the County at the rate reflected in WIS. STAT. § 977.08(4m)(b), the record is silent here as to whether the trial court utilized the correct rate.



Belter indigent when she started the divorce action. Therefore, the trial court could lawfully order the County to pay Salim's one-half of the guardian ad litem fees since both parties were indigent. It could also order Salim to reimburse the County at a later date. *See id.*, ¶10.

*D. The guardian ad litem prepared no written report.*

¶14 Salim further submits that he was not given an opportunity to challenge the guardian ad litem's report. He seems to believe that a written report was submitted to the court and that he was not allowed to see it. There was no written report, however. The guardian ad litem gave the court its recommendation orally. Moreover, this case provided very few options for the guardian ad litem. Salim is serving a nine-year-plus prison sentence and will, in all likelihood, be deported shortly after his release on extended supervision. The criminal court judge placed a restriction on his having any contact with the children until they reach the age of majority. As a consequence, there was no need for the guardian ad litem to do an extensive investigation. Salim complains that the guardian ad litem did not ask the children how they feel about him, but that inquiry was irrelevant because Salim cannot contact the children. The guardian ad litem spoke to all the parties and investigated those matters that were relevant.

*E. The trial court properly exercised its discretion when it refused to modify the criminal court order restricting contact between Salim and his children.*

¶15 Salim is also critical of the trial court's decision holding open placement of the children with Salim. Salim believes that the trial court had the discretion to order communication with the children. He is wrong. Because of the prohibition by the sentencing court of any contact by Salim with his children until the children reach majority, the family court judge had little discretion. The

family court judge held open placement, which was appropriate in light of its limited alternatives.

*F. The trial court properly exercised its discretion in dividing the marital property.*

¶16 Salim additionally argues that the trial court did not follow the dictates of WIS. STAT. § 767.61 in dividing the marital property. He submits that he should have been awarded various items including watches, a toy collection, and a coin collection. What Salim fails to understand is that implicit in the trial court's decision is its credibility determination finding Salim less credible than Belter. Salim insisted that Belter possessed many of his belongings. Belter testified that Salim came to the family residence on two occasions, accompanied by police, and removed his property. Clearly, the trial court found Belter more credible than Salim. *Cf. Deannia D. v. Lamont D.*, 2005 WI App 264, ¶11, 288 Wis. 2d 485, 709 N.W.2d 879 (trial court is in the best position to observe and evaluate evidence). Thus, the trial court did not erroneously exercise its discretion in awarding each the property in their possession.

*G. The trial court properly exercised its discretion in denying maintenance to Salim.*

¶17 Salim also contends that the trial court, in denying him maintenance, failed to consider the factors listed in WIS. STAT. § 767.56. He argues that:

The court never took into consideration the length of the marriage which the parties were married on October 23, 2000. Never took into consideration the division of property that was supposed to occur under § 767.61. Never considered the educational level of each party. Never considered the earning capacity of Muhannad. Never considered feasibility of Muhannad becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Never considered the 2010 tax return. The court wrongfully considered the Marital Settlement Agreement that was not signed or

agreed to and was repudiated. Never considered the contribution that Muhannad made to Laurie Belter's education and support of their three children and one stepson so she could better her education in the medical field.

We disagree. The single most important factor that the trial court took into consideration was that Belter would be solely responsible for the support of herself and the three children on her approximately \$35,000 income. This leaves little, if any, discretionary funds. In addition, the trial court observed that Salim's basic needs would be provided by the prison system. This was a proper exercise of discretion.

¶18 In sum, the trial court proceeded lawfully and properly exercised its discretion in reaching the result that it did. Accordingly, we affirm.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.

